UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YANNDEL CRESPO, Plaintiff, vs. MICHAEL CHERTOFF, Defendant.	CASE NO. 08CV1222 BTM (BLM) ORDER GRANTING IFP AND MOTION TO APPOINT COUNSEL

Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241. He simultaneously filed a motion to proceed *in forma pauperis* ("IFP Motion") and a motion for appointment of counsel.

The Court has considered Petitioner's declaration in support of his motion to proceed IFP under 28 U.S.C. § 1915 and his motion for appointment of counsel. Petitioner's application to proceed IFP reveals that Petitioner has no money in his prison trust account and no other assets or sources of income. Based on the above, the Court GRANTS Plaintiff's motion to proceed IFP.

Plaintiff also requests appointment of counsel pursuant to 18 U.S.C. §3006A. 18 U.S.C. § 3006A(a)(2)(B) provides that "[w]henever the United States magistrate or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who . . . (B) is seeking relief under section 2241." In deciding whether to appoint counsel, the district court "must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved." Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997).

Upon review of the Petition, the Court concludes that Petitioner has demonstrated a likelihood of success in challenging his prolonged immigration detention under Zadvydas v. Davis, 533 U.S. 678, 686-90 (2001); Tijani v. Willis, 430 F.3d 1241 (9th Cir. 2005); and Nadarajah v. Gonzalez, 443 F.3d 1069 (9th Cir. 2006). Petitioner alleges that the Department of Homeland Security has been unsuccessful in obtaining travel documents to his country of repatriation for over 33 months. If this allegation is correct, Petitioner may be entitled to relief under the above cases because his detention is prolonged and indefinite. The Court further notes that Petitioner's claims are based on a relatively new and evolving area of the law. The Court therefore GRANTS Petitioner's Motion for Appointment of Counsel. The Court appoints Federal Defenders as Petitioner's counsel in this case.

Having reviewed Petitioner's claims, the Court finds that summary dismissal of the petition is not warranted at this time. Accordingly, Respondents are ordered to show cause why the petition should not be granted. Respondents shall file a written return by September 5, 2008. Petitioner may file a traverse by September 26, 2008. This matter shall be calendared for disposition on October 17 , 2008 at 11:00 a.m.

Accordingly, IT IS ORDERED:

(1) Petitioner is permitted to prosecute this action without being required to prepay fees or costs and without being required to post security.

(2) The Clerk of Court shall file Petitioner's petition without prepayment of the filing fee.

(3) The United States Marshal shall serve a copy of the petition and this Order upon defendants as directed by Petitioner on U.S. Marshal form 285. All costs of service shall be advanced by the United States.

(4) Petitioner shall serve upon respondents, or, if appearance has been entered by counsel, upon respondents' attorney, a copy of every further pleading or

other document submitted or filed for the Court's consideration. Petitioner shall include with the original paper to be filed with the Clerk of Court a certificate stating the manner in which a true and correct copy of any document was served on respondents or respondents' counsel and the date of service. Any paper received by a District Judge or Magistrate Judge that has not been filed with the Clerk or that fails to include a Certificate of Service will be disregarded by the Court.

(5) Federal Defenders is appointed as counsel for Petitioner.

IT IS SO ORDERED.

DATED: August 15, 2008

Honorable Barry Ted Moskowitz
United States District Judge